IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10029 OF 2004

R.S. Jaiswal .. Petitioner

V/s

Union of India & Ors. .. Respondents

Mr.S.S. Karkera for the Petitioner.

Mrs.Nita Masurkar for the Respondents.

CORAM : H.L. GOKHALE &
S.P. KUKDAY, JJ.

DATE : 13TH JUNE 2005

P.C. :

1. The Petitioner is seeking to get restructuring of his payscale. His grievance is that he is situated similarly to others who have filed O.A. being O.A. No.187 of 1998 and that O.A. came to be allowed by the Tribunal by its order dated 26th February 2002. On his making a representation, the BSNL rejected the same by informing him that the decision was applicable to those who had filed the O.A.

2. The Petitioner filed his own O.A. being O.A. No.845 of 2003 to the Tribunal. The Tribunal however

noted that the applicant by then had been absorbed in BSNL and therefore it could not exercise the jurisdiction. This O.A. came to be rejected and the present petition is thereafter filed in December 2004. A reply has been filed by the Respondents and they have pointed out that the Petitioner was expected to give his option to move to the restructured cadre. That was to be done way back in the year 1994-95. He did not avail of that facility that time. He however got one more chance in August 1999. That restructuring was permitted. Now through this petition and particularly prayer (b), he is seeking a direction that he should be deemed to have exercised his option during the extended period from May 1994 to June 1994. Obviously the claim is belated as contended by the Respondents in their reply.

3. The Petitioner has relied upon a judgment of the Supreme Court in the case of **K.C. Sharma v. Union of India - 1998 (1) All India Services Law Journal 54**, wherein the Supreme Court has stated that where an applicant had filed an application seeking a benefit similar to some others similarly situated and the same was rejected by the Tribunal on the ground of limitation, that was not correct. The present facts are clearly different. The Petitioner did not avail of the

facility of giving the option way back given in 1994. Now he wants a declaration that he should be deemed to have exercised his option. Obviously, as set out above, it is undoubtedly belated. Petition is rejected.

(H.L. GOKHALE, J.)

(S.P. KUKDAY, J.)